IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8888 of 1992
With
SPECIAL CIVIL APPLICATION No. 8916 of 1992
To
SPECIAL CIVIL APPLICATION No. 8918 of 1992
With
SPECIAL CIVIL APPLICATION No. 9101 of 1992
To
SPECIAL CIVIL APPLICATION No. 9102 of 1992
With
SPECIAL CIVIL APPLICATION No. 13282 of 1993

For Approval and Signature:

HONOURABLE **MS. JUSTICE R.M.DOSHIT**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

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JAYANTILAL MANILAL SHAH - Petitioner(s)

Versus

COLLECTOR OF AHMEDABAD & 2 - Respondent(s)

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Appearance **:**

SPECIAL CIVIL APPLICATION No. 8888 of 1992
MR SK JHAVERI & Mr. M.K VAKHARIA with Jirga Jhaveri for Petitioner
MR KAMAL TRIVEDI Advocate General with Miss Sangeeta Vishen AGP for Respondents

SPECIAL CIVIL APPLICATION No. 8916 to 8918 of 1992

Mr AJ PATEL Patel with Mr MK VAHARIA for the Petitioners

Mr KAMAL TRIVEDI Advocate General with Miss Sangeeta Vishen AGP for Respondents

SPECIAL CIVIL APPLICATION No. 9101 & 9102 of 1992

Mr AJ PATEL with Mr MK VAKHARIA for Petitioners

Mr KAMAL TRIVEDI Advocate General with Miss Sangeeta Vishen AGP for Respondents

SPECIAL CIVIL APPLICATION No. 13282 of 1993

Mr AJ PATEL with Mr MK VAKHARIA for Petitioners

Mr. KAMAL TRIVEDI Advocate General with Miss Sangeeta Vishen AGP for Respondents.

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

23rd August, 2007.

COMMON JUDGMENT

This group of petitions arises from the order made by the District Collector, Ahmedabad in exercise of power of *suo motu* revision conferred by Rule 108 [6] of the Bombay Land Revenue Rules, 1972. The matters at dispute is the land City Survey No. 155 admeasuring 1 Acre 2 Gunthas of village-Vastrapur. The aforesaid land Survey No.155 was registered in the revenue records as "***new tenure***" land.

It appears that the land Survey No.155 belonged to one Parshottambhai Khodidas. In the year 1980, he applied to the City Deputy Collector, Ahmedabad to convert the said land into "*old tenure*". By order dated 6th October, 1980, the said land was converted into "*old tenure land*" for the purpose of agriculture on payment of 60 times the assessment. In the year 1987, the said Purshottambhai Khodidas obtained development permission from the Ahmedabad Urban Development Authority. Since then, he divided the land

into sub-plots and sold such sub-plots to various purchasers [*the petitioners in this group of petitions*] by registered sale deeds. He then applied to the City Deputy Collector to delete the term "*new tenure*" entered in the revenue record under Revenue Entry No. 1074 made on 1st February, 1956 in respect of the said land Survey No. 155. The City Deputy Collector by his order dated 30th May, 1988 accepted the said application and ordered to delete the words "*new tenure*" entered in the aforesaid Entry No. 1074. The City Deputy Collector relied upon the Government Circulars dated 21st August, 1955 issued by the then State of Bombay; the Government Circular dated 12th November, 1962, etc. The City Deputy Collector observed that the record relating to the said revenue entry no. 1074 was not available, there was no order to treat the land as that of "*new tenure*". The said endorsement was made through oversight. He also relied upon the Pratibook and Kayamkharda produced by the applicant.

The aforesaid order dated 30th May, 1988 was taken into *suo motu* revision by the District Collector, Ahmedabad in the year 1991. After issuing notice to

the concerned parties and after hearing them, the District Collector made the order *impugned* in these petitions to set-aside the aforesaid order dated 30th May, 1988 made by the City Deputy Collector. The District Collector was pleased to observe that the Land Survey No. 155 was a "*new tenure*" land atleast since 1940 and it continued to be "*new tenure*" land all along. The revenue entry no. 1074 came to be made on 1st February, 1956 to make it explicit that the said land was impartible. He also observed that the owner had, as far back as in the year 1980, applied for conversion into "*old tenure*" for the purpose of agriculture. Thus, it was tacitly accepted that the said land was a "*new tenure*" land. *Nevertheless*, the City Deputy Collector had without referring to the records, modified the revenue entry no. 1074 and had deleted the terms "*new tenure*" and "*impartible*" entered in the revenue record.

Feeling aggrieved by the aforesaid order made by the District Collector, the petitioners-individual purchasers of the sub-plots of the said land Survey No.155, have preferred these petitions. At the outset, Mr. Patel has relied upon the order dated 4th April,

1994 made by this Court [*Coram* : ***S.D Shah, J.***] in this group of petitions. He has relied upon the observations that by the time, the petitions were filed, the land was already developed, residential houses were constructed and were occupied. What the Court had considered was that the Court was required to decide as to how the premium should be fixed and by reference to which date. The Court had directed the Chief Town Planner to ascertain the market price of the said land by reference to the date of *Banakhat* i.e., referable to the year 1981 and also by reference to the date the said land was put to non-agricultural use i.e. the year 1988. Mr. Patel has submitted that what the Court was considering was the premium that should be payable by the individual purchaser. He agreed that such premium may not be computed on the basis of the market price of the said land prevalent in the year 1981. The petitioners may be compelled to pay *premium* computed on the basis of the market price prevalent in the year 1988, the year in which the land was put to non-agricultural use. The said proposition, however, is not accepted by the State Government. Learned Advocate General Mr. Trivedi has submitted that what the State Government insisted was the

premium to be computed on the basis of the market price prevalent in the year 2007. However, the State Government has now agreed to compute such premium on the basis of the market price prevalent in the year 1999.

It is evident that the parties are not *idem* in respect of the premium that may be payable by the present land owners. In absence of such consensus, as the question of *quantum* of premium is not the subject matter of these petitions, this Court does not enter into the question as to what should be the amount of premium payable or how and on what basis the premium should be computed for conversion of the said land in non-agricultural land.

As to the challenge to the *impugned* order made by the District Collector, Mr. Patel has submitted that the order deserves to be *quashed* and *set-aside* on the ground of delay and *latches* alone. He has submitted that the order of the City Deputy Collector made in the year 1988 was taken in *suo-motu* revision by the State Government more than three years thereafter. During the said period, parts of the said land were sold to the respective buyers. The respective

purchasers have put in substantial amount to raise construction. Hence, the power exercised by the District Collector after an unduly long and unexplained delay cannot be sustained. In support thereof, he has relied upon the judgments in the matters of ***Bhagwanji Bawanji Patel v. State of Gujarat & Anr.*** [12 GLR 156]; of ***Palitana Sugar Mills [P] Limited v. State of Gujarat & Ors.*** [(2004) 12 SCC 645] and the order made by the Division Bench of this Court [*Coram* : ***M.R Calla & R.R Tripathi, JJ.***] on 24th August, 2000 in the matter of ***State of Gujarat vs. Bhikaji Maganji Thakore*** [*Letters Patel Appeal No. 626 of 1997 in Special Civil Application No. 7878 of 1996 & other appeals*]. He has also relied upon the Order dated 13th March, 2007 made by this Court [*Coram* : ***R.S Garg, J.***] in Special Civil Application No. 7998 of 1992 [***Shardaben wd/o. Chunibhai C. Patel & Anr. vs. State of Gujarat]***.

The petitions are contested by Mr. Trivedi. He has relied upon the counter affidavit made by the State Government. He has submitted that the Pratibook and Kayamkharda relied upon by the City Deputy Collector were the revenue records prevalent in the

nineteenth century. The term "*new tenure*" was then unknown. Reliance on the said documents was wholly uncalled for. He has submitted that in or around 1900-1901 on account of famine, the farmers could not pay the land revenue. Consequently, the lands were forfeited. Re-grant of the said lands were thereafter made on condition that the said lands were impartible – what we now call as "*new tenure*". Since then, the aforesaid land Survey No. 155 continued to a "*new tenure*" land, impartible and inalienable. On 21st September, 1955, the then Government of Bombay issued a Circular requiring that the mention of the word "*new tenure*" in the record was not sufficient and the specific entry of the land being "***inalienable or impartible***" be made in the revenue record. Along with other lands a specific reference was made to the aforesaid land survey no. 155 of village Vastrapur. It was pursuant to the said circular of 1955 that the entry no. 1074 came to be made on 1st February, 1956 in respect of several pieces of lands, including the aforesaid land Survey No. 155 of village-Vastrapur. Thus, the City Deputy Collector was entirely wrong in observing that no record was available in respect of the revenue entry no. 1074. Mr. Trivedi has also

relied upon the Government Resolution dated 16th March, 1982. He has submitted that the said Resolution contains instructions to the revenue authorities in respect of the revenue entries. Clause [8] of the said Resolution specifically says that the entry made in respect of the grant of land shall not be altered unless it was proved to be wrong. He has submitted that in the present cases, the City Deputy Collector acted in contravention of the said Resolution also. He has submitted that though the aforesaid land Survey No. 155 remained "*new tenure*" land for decades, the City Deputy Collector deleted the said condition of grant for asking without recourse to the record. In the circumstances, the District Collector was wholly justified in taking the said order in *suo motu* revision and in setting aside the same. In support of his arguments, he has relied upon the judgments of this Court in the matters of ***Shashikant Mohanlal Desai & Ors. v. State of Gujarat & Ors.*** [AIR 1970 (Guj) 204]; of ***Patel Jividas Trikamdas & Ors. v. District Collector, Mehsana & Ors.*** [XXXVI (2) 688]; and of ***Koli Nagjibhai Varjan v. State of Gujarat & Ors.*** [XXXIII (1) GLR 14].

In the matter of ***Bhagwanji Bawanji Patel*** [*Supra*], the Division Bench of this Court held that the *suo motu* power of revision shall be exercised by the State Government under Section 211 of the Code within the reasonable time. The period of seven years in that case was considered to be unreasonable. In the matter of ***Palitana Sugar Mills [P] Limited & Anr.*** [*Supra*], the *Hon'ble* Court has approved that view.

In the matter of ***State of Gujarat*** [*Supra*], the Division Bench called upon the State Government to produce materials on the basis of which the land in question was described as "*new tenure*" as far back as in the year 1956. In absence of such material before the Court, the Court upheld the order of the learned Single Judge setting aside the revisional order of the authority below. In the matter of ***Shardaben*** [*Supra*], this Court remanded the matter to the State Government to make inquiry as to the correctness of the entry "*new tenure*" made in the concerned revenue record. In the matter of ***Shashikant Mohanlal Desai & Ors. [Supra]***, the Court observed that, "***..The State is theoretically the owner of all lands : all occupants hold under the State. If an occupant is not entitled***

to transfer his land without the permission of the State, the State can very well say that the permission to transfer the land would be granted only if he pays a premium to the State as the sovereign owner of the land."

In the matter of ***Patel Jividas Trikamdas & Ors.*** [*Supra*], the matter at dispute was transfer of land made in contravention of the Bombay Prevention of Fragmentation & Consolidation of Holdings Act, 1947. The learned Single Judge observed that, "**..It is a settled proposition of law that any action, transaction, decision or order which is illegal and void *ab initio* is to be treated as *non-est*. The validity of such an illegal *non-est* order could be questioned in any proceedings at any stage by anybody.**" Similar is the view expressed in the matter of ***Koli Nagjibhai Varjan*** [*Supra*]. The learned Judge observed that, "***..There can be no quarrel against the proposition that when no period of limitation is statutorily provided for, the revisional power prescribed under the statutes should be exercised within a reasonable time. This is necessary with a view to give finality to the orders passed by various***

authorities which may be subject to revisions and no revisional power is exercised for a considerable time giving rise to equities and promoting the parties to proceed on the footing that the orders passed by the authorities will not be disturbed in exercise of revisional jurisdiction after a lapse of reasonable time. However, same position may not obtain when an authority exercises his powers consequent upon a transaction which is statutorily void." To this, Mr. Patel has answered that even a statutorily void order or an order which is nullity has to be questioned within the reasonable time. For that, he has relied upon the judgment in the matter of ***Valjibhai Jagjivanbhai vs. State of Gujarat*** [2005 (2) GLH 34].

The statutory provisions in respect of Records of Rights are contained in Chapter XV of the Bombay Land Revenue Rules, 1972 -comprising Rules 104 to 113. Sub-rule [6] of Rule 108 thereof [*as it stood at the relevant time*] empowered the Collector to call for and examine the record of any enquiry or the proceedings of any subordinate revenue officer held under rules 106, 107 and sub-rules [1] to [5] of rule 108 for the purpose of satisfying himself as to the regularity of

such proceedings and as to the legality or propriety of any decision or order passed in such proceedings. It is evident that the said rule does not provide the period of limitation within which the Collector may exercise the power of revision conferred by the aforesaid sub-rule [6] of Rule 108. *Undoubtedly*, such power should be exercised within reasonable time. What should be the reasonable time would depend upon the facts of each case. In the present case, as observed hereinabove, the land owner approached the City Deputy Collector with a request to delete the entry "*imparable*" made in the revenue entry no. 1074 as far back as on 1st February, 1956. It is apparent that the entry no. 1074 was made pursuant to the Government instruction contained in the above referred Circular of 1955. Nevertheless, the City Deputy Collector, though he did refer to the said circular of 1955, observed that no material or record was available in support of the revenue entry no. 1074 and accepted the request apparently for asking. It should be noted that the Government Resolution dated 16th March, 1982; particularly Clause [8] thereof, specifically mentions that such entry should not be altered unless it was proved wrong. In other words, such entries are

presumed to be correct. The City Deputy Collector did make alteration apparently for asking. As it now turns out, the materials in support of the revenue entry no. 1074 was available [*produced by the State Government pages No. 59 to 77 alongwith the affidavit*]. Evidently, the said order dated 30th May, 1988 was made by the City Deputy Collector on *extraneous* consideration without recourse to the materials on record. The action taken by the District Collector in exercise of power of *suo motu* revision, even after some delay, would not warrant interference by this Court.

The *impugned* order made by the District Collector, Ahmedabad in exercise of power of *suo motu* revision is self-explanatory and is based on the relevant materials available on record. This Court is of the opinion that interference with such order will not be justified.

For the aforesaid reasons, these petitions are dismissed. Rule *nisi* issued in each petition is discharged. *Interim* relief stands vacated. The parties will bear their own cost.

Learned advocate Mr. Patel requests that the *status quo* ordered to be maintained pending this petition be continued for a period of four weeks. The request is granted. The *status quo* ordered to be maintained, shall continue till 1st October, 2007.

Registry will maintain copy of this order in each petition.

{Ms. R.M Doshit, J.}

*Prakash**